



ANNO TRICESIMO

# ELIZABETHAE II REGINAE

A.D. 1981

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## No. 22 of 1981

An Act to amend the Prisons Act, 1936-1976.

[Assented to 19 March 1981]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Prisons Act Amendment Act, 1981". Short titles.
- (2) The Prisons Act, 1936-1976, is in this Act referred to as "the principal Act".
- (3) The principal Act, as amended by this Act, may be cited as the "Prisons Act, 1936-1981".

2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commence-  
ment.

(2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of any specified provisions of this Act until a day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

3. Section 3 of the principal Act is amended—

Amendment of  
s. 3—  
Arrangement.

(a) by inserting after the item—

### PART I—PRELIMINARY.

the following item:

### PART IA—THE CORRECTIONAL SERVICES ADVISORY COUNCIL.;

and

(b) by inserting after the item—

### PART IVA—SENTENCES AND PAROLE.

the following item:

### PART IVB—CONDITIONAL RELEASE.

Amendment of  
s. 5—  
Interpretation.

4. Section 5 of the principal Act is amended—

(a) by inserting after the definition of “Assistant Director” the following definition:

“conditional release” means release from prison under Part IVB;;

and

(b) by inserting after the definition of “sheriff” the following definition:

“superintendent”, in relation to a prison, means the person for the time being in charge of the prison:.

Insertion of  
new s. 6aa.

5. The following section is inserted in Part I after section 6 of the principal Act:

Transitional  
provision.

6aa. An order of the parole board in force under this Act immediately before the commencement of the Prisons Act Amendment Act, 1981, shall, notwithstanding the repeal of sections 42k to 42n effected by that amending Act, remain in force for the purposes of, and subject to, the provisions substituted for those repealed provisions by the amending Act.

Insertion of  
new Part IA.

6. The following Part is inserted after section 6aa of the principal Act:

PART IA

THE CORRECTIONAL SERVICES ADVISORY COUNCIL

Establishment  
of the  
Advisory  
Council.

6a. (1) There shall be a council entitled the “Correctional Services Advisory Council”.

(2) The Advisory Council shall consist of six members appointed by the Governor, of whom—

(a) one, the Chairman, shall be a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, the science of criminology, penology or any other related science;

(b) one, the Deputy Chairman, shall be a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, the field of business management, medicine, social welfare or education;

(c) one shall be a person nominated by the Attorney-General;

and

(d) three shall be persons nominated by the Minister.

(3) At least one of the members of the Advisory Council must be a woman.

Term of office  
of members.

6b. (1) The Chairman of the Advisory Council shall be appointed for a term of five years.

(2) A member of the Advisory Council other than the Chairman shall be appointed for such term, not exceeding three years, as the Governor determines and specifies in the instrument of his appointment.

(3) Upon the expiration of the term of office of a member of the Advisory Council, he shall be eligible for re-appointment.

6c. A member of the Advisory Council shall be entitled to receive such allowances and expenses as the Governor may from time to time determine.

Allowances  
and expenses.

6d. (1) The Governor may remove a member of the Advisory Council from office on the ground of—

Removal from  
and vacancies  
of office.

- (a) mental or physical incapacity;
- (b) dishonourable conduct;
- or
- (c) neglect of duty.

(2) The office of a member of the Advisory Council shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by giving notice in writing to the Minister;
- or
- (d) he is removed from office by the Governor pursuant to subsection (1).

(3) Upon the office of a member of the Advisory Council becoming vacant, a person shall be appointed to that office in accordance with this Act.

6e. (1) The Chairman or, in his absence, the Deputy Chairman shall preside at any meeting of the Advisory Council.

Manner in  
which business  
of the Advisory  
Council must  
be conducted.

(2) Four members, one of whom must be the Chairman or the Deputy Chairman, shall constitute a quorum of the Advisory Council, and no business shall be transacted at any meeting of the Advisory Council unless a quorum is present.

(3) Subject to this Part, the business of the Advisory Council shall be conducted in such manner as the Advisory Council may determine.

6f. (1) The functions of the Advisory Council are to—

Functions of  
the Advisory  
Council.

- (a) monitor and evaluate the administration and operation of this Act;
- (b) report to the Minister on any matter referred to the Advisory Council by the Minister;
- (c) of its own motion report to the Minister on any matter pertaining to the administration or operation of this Act;
- and
- (d) perform such other functions as may be prescribed by or under this Act, or any other Act.

(2) A member of the Advisory Council is entitled at any reasonable time to enter and inspect any prison and ask questions of any person within the prison.

Annual report.

6g. (1) The Advisory Council shall, not later than the thirty-first day of October in each year, report to the Minister on the administration and operation of this Act during the previous financial year.

(2) The Minister shall, as soon as practicable after his receipt of a report submitted to him under subsection (1), cause a copy of the report to be laid before each House of Parliament.

Insertion of new s. 11a.

7. The following section is inserted in Part II after section 11 of the principal Act:

Use of volunteers in the administration of this Act.

11a. The Minister shall promote the use of volunteers in the administration of this Act to such extent as he thinks appropriate.

Amendment of s. 41—  
Discharge of prisoners.

8. Section 41 of the principal Act is amended—

(a) by inserting in subsection (1) after the passage “would lawfully expire” firstly occurring the passage “, or whose conditional release is due,”;

(b) by inserting in subsection (1) after the passage “would lawfully expire” secondly occurring the passage “, or his conditional release is due,”;

and

(c) by inserting in subsection (2) after the passage “would lawfully expire” the passage “, or his conditional release is due, as the case may be”.

Amendment of s. 42a—  
The parole board.

9. Section 42a of the principal Act is amended—

(a) by striking out from subsection (2) the passage “five members” and substituting the passage “six members”;

and

(b) by striking out paragraphs (d) and (e) from subsection (2) and substituting the following paragraph:

and

(d) three shall be persons nominated by the Minister.

Amendment of s. 42c—  
Proceedings of the board.

10. Section 42c of the principal Act is amended by striking out from subsection (4) the word “Three” and substituting the word “Four”.

Repeal of ss. 42i and 42j and substitution of new section.

11. Sections 42i and 42j of the principal Act are repealed and the following section is substituted:

Court shall fix or extend non-parole periods.

42i. (1) Where a court sentences a person to life imprisonment, or a term of imprisonment exceeding three months, or imposes a number of sentences under which he is liable to imprisonment for more than three months, the court shall, by order, fix a period during which the person shall not be released on parole.

(2) Where—

(a) a person who is in prison serving a sentence of imprisonment is further sentenced by a court to life imprisonment, or to a term, or terms, of imprisonment;

- (b) the further sentence, or sentences, have the effect of extending the total period of imprisonment to which the person is liable;

and

- (c) that total period of imprisonment to which he is liable exceeds three months,

the court shall, subject to subsection (4), fix a period during which the person shall not be released on parole, or extend any existing non-parole period, as the case may require, but the non-parole period so fixed, or the period by which an existing non-parole period is extended, shall not exceed the period of imprisonment imposed by the further sentence, or sentences.

- (3) In fixing or extending a non-parole period, the court—

- (a) shall have regard to all the sentences of imprisonment that the person is liable to serve;

and

- (b) where the person is in prison serving a sentence of imprisonment, shall take into account the period he has already served.

(4) The court shall not fix a non-parole period in respect of a person in prison serving a sentence of imprisonment, if the person has already served a period of imprisonment that would be equal to, or exceed, a non-parole period determined in accordance with subsections (2) and (3).

(5) This section does not apply in relation to a person who has been found or declared to be insane, an habitual criminal or incapable of exercising proper control over his sexual instincts, pursuant to the Criminal Law Consolidation Act, 1935-1980.

12. Sections 42k to 42n (inclusive) of the principal Act are repealed and the following sections are substituted:

Repeal of  
ss. 42k to  
42n and  
substitution  
of new  
sections.

42k. (1) A prisoner who is serving—

- (a) a sentence of life imprisonment;  
(b) a sentence of imprisonment for a term exceeding three months;

or

- (c) a number of sentences under which he is liable to imprisonment for a period of more than three months,

may apply in the prescribed manner to the board for his release on parole.

(2) Subject to subsection (3), an application under subsection (1) shall not be made for the release of a prisoner—

- (a) before the expiration of any non-parole period fixed in respect of his sentence;

or

- (b) where a non-parole period has not been fixed—before he has served three months of his sentence.

Application  
for parole.

(3) An application under subsection (1) may be made by a prisoner for release from prison before the expiration of a non-parole period if he has applied for and obtained consent to do so from a magistrate or judge of a court of the same jurisdiction as the court that fixed the non-parole period, or the court that last extended the non-parole period, as the case may require.

(4) This section does not apply to a prisoner who has been found or declared to be insane, an habitual criminal or incapable of exercising proper control over his sexual instincts, pursuant to the Criminal Law Consolidation Act, 1935-1980.

Matters to  
be taken  
into  
consideration  
by the board.

42l. In determining an application for the release of a prisoner on parole, the board shall have regard to the following matters:

- (a) the likelihood of the prisoner complying with the conditions upon which he may be released;
- (b) the circumstances of the offence for which the prisoner was sentenced to imprisonment, and any matter taken into account by the court in determining sentence;
- (c) the gravity of the offence;
- (d) any remarks made by the court in passing sentence;
- (e) the behaviour of the prisoner while in prison;
- (f) any social background, medical, psychological or psychiatric reports tendered to the board;
- (g) the behaviour of the prisoner during any previous period of release on parole;
- and
- (h) any other matters that the board thinks are relevant.

Release on  
parole.

42m. (1) The board may, upon consideration of the matters referred to in section 42l, order that a prisoner (not being a prisoner who is serving a sentence of life imprisonment) be released from prison on parole on a day specified in the order.

(2) The board may, upon consideration of the matters referred to in section 42l, recommend to the Governor that a prisoner who is serving a sentence of life imprisonment be released from prison on parole.

(3) The Governor may, upon receiving a recommendation under subsection (2), order that the prisoner be released from prison on parole on a day specified in the order, for a period of not less than three years nor more than ten.

(4) The release of a prisoner from prison on parole—

(a) shall be subject to the conditions—

(i) that the prisoner shall not commit any offence;  
and

(ii) that the prisoner shall be under the supervision of a parole officer, and shall obey the reasonable directions of the parole officer,

until the expiration of the period of his parole;

and

(b) may be subject to any other condition the board thinks appropriate until the expiration of the period of his parole, or for such lesser period as the board may specify.

(5) The board may, at any time before a prisoner is released on parole pursuant to an order of the board, revoke the order, or revoke or vary any of the conditions to which the parole is subject.

(6) The board may, at any time before a prisoner is released on parole pursuant to an order of the Governor, recommend to the Governor that the order be revoked, or that any condition of the parole be revoked or varied, and the Governor, upon receiving such a recommendation, may order accordingly.

42n. A prisoner (not being a prisoner serving a sentence of life imprisonment) who is released on parole shall, unless his release is cancelled, his parole order is discharged or his sentence is extinguished, remain on parole until the expiry of the term, or terms, of imprisonment to which he was sentenced.

Duration of parole in relation to prisoners not serving sentences of life imprisonment.

42na. (1) A prisoner serving a sentence of life imprisonment who is released on parole shall, unless his release is cancelled, or his sentence is extinguished, remain on parole for the period fixed by the Governor.

Duration of parole and subsequent expiry of sentence in relation to prisoners serving sentences of life imprisonment.

(2) Upon the expiry of the parole of a person pursuant to subsection (1), his sentence of imprisonment shall, subject to section 42nf, be deemed to have been wholly satisfied.

42nb. (1) A person who has been released on parole may apply to the board for an order varying or revoking any condition of his parole.

Prisoner on parole may apply for variation or revocation of condition of his parole.

(2) The board may, upon an application made under subsection (1) by a person serving a sentence other than a sentence of life imprisonment, make an order varying or revoking a condition of his parole.

(3) The board may, upon an application made under subsection (1) by a person serving a sentence of life imprisonment, recommend to the Governor that a condition of his parole be varied or revoked, and the Governor may, upon receiving such a recommendation, order accordingly.

(4) The board shall not make an order or recommendation under this section in relation to a person who is under the supervision of a parole officer unless it has obtained and considered a report from that parole officer.

42nc. (1) The board may, upon the application of a person who has been released on parole (not being a person serving a sentence of life imprisonment), make an order discharging the person from parole.

Prisoner on parole (other than life prisoner) may apply for discharge from parole.

(2) The board shall not make an order under this section in relation to a person who is under the supervision of a parole officer unless it has obtained and considered a report from that parole officer.

(3) Where a person has been discharged from parole under this section, he shall, upon the day he is so discharged, be deemed to have been released under Part IVB, and the provisions of that Part apply accordingly.

Board may  
cancel the  
parole of  
a person.

42nd. (1) The board may cancel the release on parole of a person (not being a person serving a sentence of life imprisonment), or may recommend to the Governor that the release on parole of a person serving a sentence of life imprisonment be cancelled, if the board is satisfied—

(a) that the person obtained his release on parole by unlawful means;

or

(b) that there is other good reason why the person should not have been released on parole.

(2) The Governor may, upon receiving a recommendation under subsection (1), cancel the release on parole of a person serving a sentence of life imprisonment.

(3) Where the release of a person is cancelled pursuant to this section, he is, subject to subsection (4), liable to serve in prison the balance of his sentence, or sentences, unexpired as at the day on which he was released from prison on parole.

(4) The board, if it is satisfied that good reason exists for doing so, may direct, or may recommend to the Governor, as the case may require, that a person whose release is cancelled pursuant to this section be liable to serve the balance of his sentence, or sentences, unexpired as at the day on which his release is so cancelled.

Cancellation  
of parole  
release for  
breach of  
condition.

42ne. (1) Where the board is satisfied that a person who is on parole has breached a condition of his parole, it may, by order, cancel his release.

(2) The board shall not make an order under this section in relation to a person who is under the supervision of a parole officer unless it has obtained and considered a report from that parole officer.

(3) Where the release of a person is cancelled pursuant to this section, he is liable to serve in prison the balance of his sentence, or sentences, unexpired as at the day on which the breach was committed.

Cancellation  
is automatic  
upon sentence  
of imprison-  
ment for  
offence  
committed  
while on  
parole.

42nf. (1) Where a person released from prison on parole is sentenced to imprisonment for an offence committed during the period of his release on parole he is liable to serve in prison the balance of his sentence, or sentences, of imprisonment unexpired as at the day on which the offence was committed, notwithstanding that at the time of conviction, his parole may have expired or been discharged, or his sentence, or sentences, of imprisonment may have expired.

(2) Where a person referred to in subsection (1) is, at the time of conviction, still on parole, his parole is, by virtue of this subsection, cancelled.

Apprehension  
of prisoner  
whose parole  
has been,  
or may be,  
cancelled.

42ng. (1) Where a member of the board suspects on reasonable grounds that a person released on parole may have breached a condition of his parole, the member may—

(a) summon the person to appear before the board;

or

(b) apply to a justice for a warrant for the apprehension of the person, for the purpose of bringing him before the board.



(2) Where a person fails to attend before the board in pursuance of a summons issued under subsection (1), the board—

(a) may proceed to deal with the matter in his absence;

or

(b) may direct a member of the board to apply to a justice for a warrant for the apprehension of the person for the purpose of bringing him before the board.

(3) A member of the board may apply to a justice for a warrant for the apprehension and return to prison of a person whose release on parole has been cancelled.

42nh. (1) Upon receiving any application made under this Part, the board shall notify the Director and the Commissioner of Police and shall advise them of the day and time fixed for the hearing of the application.

The Director, the Commissioner of Police and the prisoner may appear before the board in any proceedings.

(2) For the purpose of any proceedings under this Part—

(a) the Director, or any officer of the Department authorized by the Director for the purpose, may make such submissions to the board in writing as he thinks fit;

(b) the Commissioner of Police, or any member of the police force authorized by him for the purpose, may make such submissions to the board in writing as he thinks fit;

and

(c) the prisoner may make such submissions in writing to the board as he thinks fit.

(3) Where, in any proceedings before the board, the Director, an officer of the Department, the Commissioner of Police or a member of the police force appears personally before the board, the prisoner the subject of those proceedings may appear before the board for the purpose of making submissions.

42ni. The power of the board or the Governor under this Part to release a person from prison on parole may be exercised by the board or the Governor, as the case may require, notwithstanding that the board or the Governor has released that person on parole on one or more previous occasions in respect of the same sentence of imprisonment.

Board may release a prisoner on parole more than once in relation to the same sentence.

13. Section 42q of the principal Act is amended—

(a) by striking out from paragraph (a) the passage “probationary release” and substituting the passage “release on parole”;

and

(b) by striking out paragraphs (b) and (d).

Amendment of s. 42q—Regulations.

14. The following Part is inserted after Part IVA of the principal Act:

Insertion of new Part IVB.

#### PART IVB

#### CONDITIONAL RELEASE

42ra. (1) Subject to subsection (2), this Part applies to a prisoner who is serving a sentence of imprisonment for a term exceeding three

Application of this Part.

months, or a number of sentences under which he is liable to imprisonment for more than three months, imposed after the commencement of the Prisons Act Amendment Act, 1981.

(2) This Part does not apply to—

- (a) a prisoner who is serving a sentence of life imprisonment;  
or
- (b) a prisoner who has been found or declared to be insane, an habitual criminal or incapable of exercising proper control over his sexual instincts, pursuant to the Criminal Law Consolidation Act, 1935-1980.

(3) This Part applies to a prisoner notwithstanding that he may be serving the unexpired balance of a sentence of imprisonment by virtue of this Part or Part IVA.

The superintendent shall grant ten days of conditional release to a prisoner at the end of each month of imprisonment.

42rb. (1) Subject to subsection (2), the superintendent of a prison shall, at the end of each month served in the prison by a prisoner, credit the prisoner with an entitlement to ten days of conditional release.

(2) Where the superintendent is of the opinion that the conduct of a prisoner has been unsatisfactory at any time during a month, and that the prisoner will not be dealt with in respect of that conduct under any other provision of this Act or any other Act or law, he may credit the prisoner with an entitlement to a lesser number of days of conditional release than ten, or may refuse to credit him with any such entitlement in respect of that month.

(3) Where the superintendent exercises his powers under subsection (2), he shall give the prisoner notice in writing of that fact, specifying the conduct in respect of which the superintendent so exercised his powers.

(4) A prisoner in respect of whom the superintendent has exercised his powers under subsection (2) may appeal to a visiting justice in the prescribed manner against the decision of the superintendent.

(5) The visiting justice may, on an appeal under subsection (4), revoke the decision of the superintendent or may vary the decision by directing that the prisoner be credited with an entitlement to a greater number of days of conditional release, but not exceeding ten.

(6) When the total number of days of conditional release credited to a prisoner and the period he has served in prison together equal the term, or terms, of imprisonment to which he was sentenced, the prisoner shall (unless released earlier under any other provision of this Act or any other Act or law) be released from prison.

Prisoner on conditional release may be returned to prison upon conviction of certain offences.

42rc. (1) A prisoner released from prison under this Part is released upon the condition that, from the time of his release until the day upon which his sentence, or sentences, of imprisonment expire or are discharged or extinguished, he will not commit any prescribed offence.

(2) Where a person released under this Part is sentenced to a term of imprisonment of one month or more for a prescribed offence committed during the period of his conditional release, he is liable to serve in prison the balance of his sentence, or sentences, of imprisonment unexpired as at the day on which the prescribed offence was committed, notwithstanding that, at the time of his conviction, his sentence, or sentences, of imprisonment may have expired.

(3) Where a person released under this Part is, during the period of his conditional release, convicted of a prescribed offence committed during the period of his conditional release in respect of which he is sentenced to a term of imprisonment of less than one month, is fined or enters into a recognizance with or without a suspended sentence of imprisonment, the court may, by order, upon the application of the prosecution, cancel the conditional release of the person.

(4) Upon the cancellation of the conditional release of a person, he shall be liable to serve in prison the balance of his sentence, or sentences, of imprisonment unexpired as at the day upon which the prescribed offence was committed, and the court may issue a warrant for his return to prison.

(5) In this section—

“prescribed offence” means—

- (a) an indictable offence;
- (b) a summary offence in respect of which a sentence of imprisonment may be imposed;

or

- (c) any other summary offence designated by the regulations as a prescribed offence for the purposes of this section.

42rd. (1) A person who has been released under this Part may apply to a court of the same jurisdiction as the court that imposed the sentence of imprisonment he is then serving for an order discharging him from the unexpired portion of his sentence.

Person on conditional release may apply to court for discharge from balance of sentence.

(2) The court may, upon an application made under subsection (1), make an order discharging the person from the unexpired portion of his sentence of imprisonment.

(3) Where the unexpired portion of a sentence is discharged pursuant to this section, the sentence of imprisonment imposed by the court shall be deemed to have been wholly satisfied.

15. Section 47 of the principal Act is amended by striking out paragraph (c) from subsection (1) and substituting the following paragraph:

Amendment of s. 47—  
Punishment.

- (c) that the prisoner forfeit such number of days of remission of sentence or conditional release credited to him as the Director or visiting justice thinks fit, but not exceeding thirty in any case;

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor